

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)

Tariff Filing Requirements for)
Nondominant Common Carriers)

CC Docket No. 93-36

APR 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**REPLY COMMENTS OF
LOCAL AREA TELECOMMUNICATIONS, INC.**

Local Area Telecommunications, Inc. ("LOCATE"), by its undersigned counsel, hereby submits its reply in response to the comments filed concerning the Commission's Notice of Proposed Rulemaking ("Notice") released in the above-referenced proceeding on February 19, 1993. Consistent with its opening comments in this proceeding, LOCATE supports the "maximum streamlined"^{1/} tariff rules for nondominant carriers proposed in the Notice.

INTRODUCTION

The Commission initiated this proceeding in response to the decision in AT&T v. FCC,^{2/} in which the United States Court of Appeals for the District of Columbia Circuit held unlawful the Commission's permissive detariffing rules for nondominant carriers (i.e.

^{1/} As used herein, "maximum streamlined regulation" includes notice rules that would permit tariffs to take effect on no less than one day's notice and to be filed without cost support. See Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd. 5880, 5881 (1993).

^{2/} AT&T v. FCC, 978 F.2d 727 (D.C. Cir.), *rehearing en banc denied*, Jan. 21, 1993 (effective on March 9, 1993).

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the "forbearance policy"). The forbearance policy^{3/} reflected the Commission's view that nondominant carriers, by definition, have no market power and cannot discriminate among customers or engage in anti-competitive cross-subsidization. The comments in this proceeding demonstrate that the Commission's policy determination remains viable today and therefore only minimal, if any, tariff burdens should be imposed on nondominant carriers.

I. THE COMMENTS SUPPORT THE PROPOSED MAXIMUM STREAMLINED TARIFF RULES FOR NONDOMINANT CARRIERS

In its opening comments in this proceeding, LOCATE stated that its experience in the market for local area services confirms the Commission's expectation that the tariff forbearance policy would foster vigorous competition. Based on its real-world experience in the marketplace, LOCATE urged the Commission to respond to the Court's recent decision by adopting "maximum streamlined" and flexible tariff requirements that would impose only minimal burdens on nondominant carriers and scarce Commission resources.

Numerous other commenting parties similarly supported "maximum streamlined" tariff requirements for nondominant carriers.^{4/} LOCATE strongly believes that the Commission should preserve the incentive and opportunity for competition and innovation

^{3/} See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Second Report and Order, 91 F.C.C.2d 59 (1982); id., Fourth Report and Order, 95 F.C.C.2d 554 (1983) ("Competitive Carrier").

^{4/} See, e.g., Comments of Association of Alternative Telecommunications Services; Comments of Metropolitan Fiber Systems, Inc.; Comments of MCI Telecommunications, Inc.

among nondominant carriers by refraining from imposing the significant costs and burdens of full tariffing rules on nondominant carriers.^{5/} As many commenters agree, it ultimately will be the public that will reap the significant benefits of robust competition. No other commenting party, including the local exchange carriers ("LECs"), has presented any persuasive reason to impose more burdensome requirements on nondominant carriers.

II. THE COMMISSION SHOULD REJECT INAPPROPRIATE REQUESTS TO USE THIS PROCEEDING TO RECONSIDER THE REGULATORY CLASSIFICATION OF DOMINANT CARRIERS

This proceeding was initiated to consider the appropriate form of tariffing rules that should apply to nondominant carriers in the wake of the Court of Appeal's narrow decision concerning the Commission's authority to eliminate requirements for nondominant carriers. Neither the court of Appeals decision nor the Commission's Notice raises the question of whether Commission policy applicable to dominant carriers should be changed or whether the classification of dominant carriers should be reevaluated.

Nonetheless, several LECs argue that they deserve some form of regulatory relief in this proceeding. The LECs are eager to agree that the streamlined tariff rules proposed in the Notice provide the Commission with sufficient regulatory oversight of

^{5/} LOCATE believes, however, that even a streamlined tariffing requirement will inhibit competition and innovation. Because market forces already ensure that the rates charged by nondominant carriers will be just and reasonable, LOCATE joins with those other parties that supports Commission action that would seek to reinstate its forbearance policy through judicial review and/or congressional codification. See Association of Local Telecommunications Services Comments at 5; Metropolitan Fiber Systems, Inc. Comments at 3-7; National Cellular Telecommunications Association Comments at 4.

competitive carriers. The LECs are supportive of the proposed streamlined rules for nondominant carriers because they apparently believe that the Commission can and should in this proceeding reconsider the LECs' dominant carrier classification and significantly relax the regulatory requirements that apply to them.⁹

The LECs essentially ask the Commission to transform this proceeding into one that would fundamentally amend the regulatory treatment of the LECs. As a threshold matter, however, basic tenets of administrative law prohibit the Commission from taking such a dramatic step in this proceeding. In the Notice, the Commission outlined proposed nondominant tariff rules and invited public comment relating to the appropriate tariffing requirements for nondominant carriers. The Commission did not propose to change its determination of which entities should be classified as nondominant and no public comment on such issue was invited. That question was expressly addressed by the Commission in the Competitive Carrier proceeding in which it determined that the LECs should be classified as dominant carriers whose tariffs would be subject to stringent review.⁷ If the LECs seek to challenge this finding, then they must do so in a proceeding properly initiated to reopen those issues. Because the LECs' requests are outside the scope of the Notice, they should be rejected.

⁹ See, e.g., BellSouth comments at 8; Southwestern Bell comments at 17; see also Ameritech comments at 3 (advocating streamlined regulation for all carriers).

⁷ See supra at n. 3.

A. The LECs are Dominant Carriers Warranting Dominant Carrier Regulation

Even if the Commission could and did consider the LECs' requests to reconsider their dominant carrier status, the Commission should reject their arguments that they should be exempted from full regulatory scrutiny on the bases of competition to LEC services. While LOCATE agrees that the Commission should impose more regulatory scrutiny on carriers that do not respond to market forces, LOCATE believes that the LECs continue to exercise sufficient market power to merit stringent review of their tariffs.

Well-accepted industry information clearly demonstrates that the LECs remain dominant carriers in the market. To date, competition has made only relatively modest inroads in LEC markets; LECs continue to control over 99% of the total market for special and switched services.^{9/}

Some LECs justify their position by suggesting that the Commission's Collocation Order^{9/} will necessarily lead to a perfectly competitive marketplace which the LECs cannot control.^{10/} LOCATE submits, however, that the Commission has not yet

^{9/} According to one study of the local access market, for example, the revenue generated by competitive access providers ("CAPs") is approximately \$260 million in a total market of approximately \$90 billion. See Connecticut Research, 1992 Alternative Local Transport . . . A Total Industry Report 36, (1992). The Chairman of AT&T recently reiterated this conclusion in testimony before Congress, citing AT&T statistics demonstrating that it pays \$14 billion in access charges to LECs but only \$19 million to CAPs. See Communications Daily, Mar. 25, 1993, at 1.

^{9/} Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd 7369 (1992).

^{10/} See, e.g., Nevada Bell and Pacific Bell at 3 ("Collocation will eliminate any physical advantage the LECs may have in providing access services.").

determined whether their proposed rates, terms and conditions for collocation would, as proposed, result in real competition. Moreover, even after the completion of the Commission's proceedings to ensure that fair and reasonably priced LEC collocation tariffs are on file, such collocation tariffs will open competition for only a narrow range of special access services. Accordingly, there currently is no reason to believe that the LECs will not continue to dominate both the special and switched access markets for the foreseeable future. Absent any evidence that the LECs have lost, or are about to lose, their dominant market position, there is no justification to extend streamlined regulation - much less maximum streamlined regulation -- to the LECs.

III. THE PROPOSED TARIFFING RULES FOR NONDOMINANT CARRIERS ARE LEGALLY APPROPRIATE AND WOULD SERVE THE PUBLIC INTEREST

As discussed below, the tariffing requirements proposed in the Notice comply with the Court's interpretation of the Act while minimizing the administrative burden and expense of the tariffing process on nondominant carriers.

A. A One Day Notice Period is Appropriate for Nondominant Carrier Tariffs

NYNEX opposes the proposal to allow nondominant carriers to file their tariffs on a minimum of one day's notice.^{11/} Contrary to NYNEX's position, however, a one-day notice period is permissible under Section 203(b)(2) of the Act which authorizes the

^{11/} NYNEX at _____. Although NYNEX contends that a one days' notice period is contrary to the public interest, it does not expressly contend that it is outside the Commission's authority under the Communications Act. See also Sprint at 3-4.

Commission to modify its own rules.^{12/} Further, a longer notice requirement would inhibit competition and serve no useful regulatory purpose given that competitive market pressures already ensure that the rates and terms and conditions in a nondominant carrier's tariff are reasonable. Indeed, as the Commission observed in the Notice, it has not once found it necessary to conduct a pre-effective review of a nondominant carrier's rates. Moreover, a Section 208 complaint offers adequate opportunity for interested parties to challenge a nondominant carrier's tariff.

While a longer notice period is not needed to ensure reasonable, nondiscriminatory nondominant carrier rates, a one-day notice period would allow nondominant carriers the

flexibility to respond quickly to developments in the marketplace and ensure

B. Nondominant Carriers Should be Permitted to File Maximum Rates or a Range of Rates

The Commission proposes to provide nondominant carriers with maximum rate flexibility by permitting them to file either a maximum rate or a range of rates. Notice at 9, para. 21. This proposal will significantly reduce the administrative burdens and costs to nondominant carriers associated with filing and maintaining FCC tariffs. The proposed rate rules will also minimize the burden on the Commission in monitoring and enforcing compliance with unnecessary regulations.

Several LECs contend, however, that the Commission has no authority to allow carriers to file maximum rates or a range of rates.^{13/} The Commission's proposed rules clearly comply with Section 203 which requires carriers to file "schedules showing all charges for itself and its connecting carriers . . . and showing the classifications, practices, and regulations affecting such charges."^{14/} A listing of the maximum rate or a range of rates for a carrier's services satisfies the minimal standard that the carrier file a "schedule" of charges. In proposing flexible tariff rules, the Commission thus does not seek to eliminate the requirements of the Act -- instead, its tariffing proposal strictly adheres to the Act's language. Indeed, the Commission seeks to modify its own tariff regulations, an act well within the authority granted to the Commission by Section

^{13/} See, e.g., Nevada Bell and Pacific Bell at 15. Regular Common Carrier Conference v. United States, 793 F.2d 376 (D.C. Cir. 376 (D.C. Cir. 1986)(interpreting Interstate Commerce Act).

^{14/} 47 U.S.C. § 203(a).

203(b)(2), which provides that the Commission may, in its discretion and for good cause shown, modify any requirement made by or under the authority of Section 203.^{15/}

For nondominant carriers, a maximum rate or range of rates provides the Commission with sufficient information to protect the public interest since market forces effectively guard against anticompetitive activities. The Commission need not and should not devote the substantial additional Commission resources that would be required if nondominant carriers were subject to full tariff regulation.

C. Nondominant Carriers Should be Subject to Streamlined Tariff Filing Procedures

LOCATE supports a simplified tariff filing process for nondominant carriers that would permit them to file tariffs and updates on floppy disks, provide carriers flexibility in indicating material that is new or changed, eliminate formalities governing the form of the transmittal letter accompanying the tariffs, and permit carriers to adopt their own methods of classifying their services and practices. These provisions provide nondominant carriers with maximum flexibility in defining their services and terms and conditions. Under this approach, carriers would not be subject to burdensome rules that require tariff revisions to be filed each time they slightly adjust a service offering to suit a particular customer's needs. The reduced frequency of tariff filings will ease the administrative and financial

^{15/} 47 U.S.C. § 203(b)(2). This Section, as interpreted by the courts, authorizes the Commission to "modify requirements as to the form of, and information contained in, tariffs," although the Commission may not eliminate these requirements wholesale. AT&T v. FCC, 503 F.2d 612, 617 (1971).


burden nondominant carriers and the filing of floppy disks will preserve valuable Commission facilities and resources.

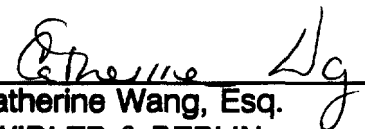
IV. CONCLUSION

For the foregoing reasons, LOCATE urges that the Commission adopt its proposed rules and impose only minimally burdensome tariff requirements for nondominant carrier tariffs.

Respectfully submitted,

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